



# OFFICE OF THE INDEPENDENT POLICE AUDITOR

CITY OF SAN JOSÉ

AUGUST 1997

<http://www.ci.san-jose.ca.us/ipa/home.html>

VOLUME 4



## You and the Police

In response to numerous civilian inquiries regarding police procedure, the IPA has compiled the following suggestions. Some suggestions have been taken verbatim from "Some Practical Suggestions about you and the Police" published by the American Civil Liberties Union (ACLU) of Northern California. Please note that these are only general guidelines not complete legal advice.

### YOUR RIGHTS AND THE POLICE

- I. What you say to the police is always important. What you say can be used against you, and it can give the police cause to arrest you, especially if you "bad mouth" a police officer.
- II. You do not have to answer a police officer's questions, but you must show your driver's license and registration when stopped in a car. In other situations where no legal cause exists, you cannot be legally arrested for refusing to identify yourself to a police officer.
- III. You do not have to give consent to any search of yourself, your car or your house; if you **do** consent to a search it can affect your rights later in court. If the police say they have a search warrant, you may request to see it. **Do not interfere with, or obstruct the police you can be arrested for it.**

## Bulletin

### 1997 Midyear Statistics

- ☒ Overall decrease in complaints filed in the first six months of 1997.
- ☒ Midyear statistics show a rise in Unnecessary Force allegations.
- ☒ What happens to a complaint filed at the IPA?
- ☒ IPA reaches out to Community.
- ☒ Access the IPA through the World Wide Web!!



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### IF YOU ARE STOPPED FOR QUESTIONING

I. The police do not need legal justification to approach you and ask you questions. You however, may choose not to talk to the police and walk away. Any interaction between you and the police is referred to as a consensual encounter because you impliedly consent to speak with the police. If the police do not allow you to leave, a **detention** occurs and the police must justify their actions. To justify a detention, the officer needs to have at least a reasonable suspicion that the person being detained, has or is about to commit a crime. A detention occurs;

- When the police physically stop a person,
- When the police instruct a person to stop or stay and the person complies,
- When a person is made to feel that he/she is not free to leave.

If you are not sure if you are being detained, you can ask the officer if you are free to leave. If the officer says "no," the officer will have to justify the detention later.

II. It is not a crime to refuse to answer questions, although refusing to answer can make the police suspicious about you. You can not be arrested merely for refusing to identify yourself on the street.

III. The police may "pat-down" your clothing to check for concealed weapons if they fear you might be armed. Do not physically resist, but you can make it clear that you do not consent to a further search.

IV. Ask if you are under arrest. If you are, you have a right to know why.

V. Do not "bad mouth" the police officer or run away, even if you believe what is happening is unreasonable. That could lead to your arrest.



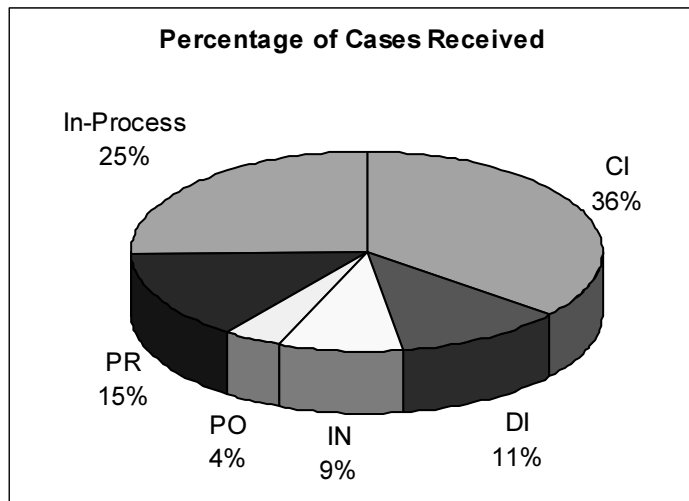
Look for additional information in the upcoming Newsletter!!

# MIDYEAR STATISTICS

## ANALYSIS OF COMPLAINT RECEIVED

January 1 through June 30, 1997

There were a total of 253 complaints received during the first six months of 1997. Of those complaints, 189 were classified. The following breakdown of the complaint classifications, is based on data gathered by the Independent Police Auditor's Office (IPA) for the period ending June 30, 1997. The IPA received 30% of the total complaints filed for this reporting period. Data analyzed was rounded off to the nearest percentage.



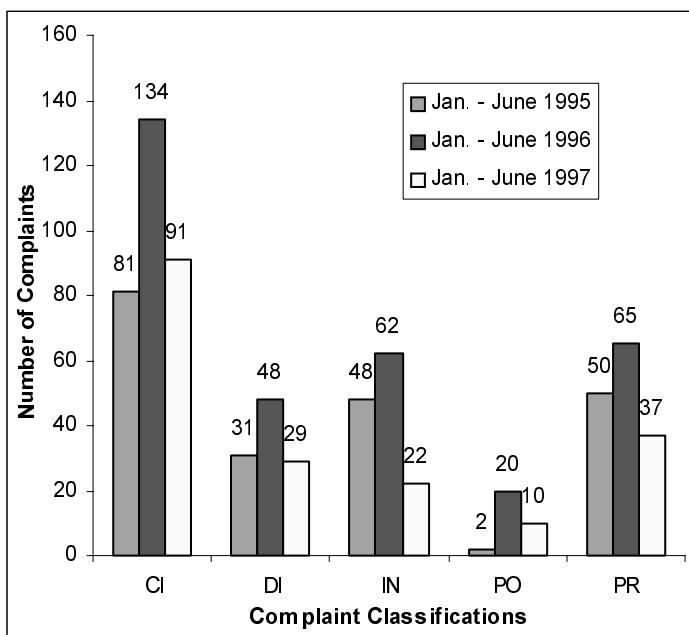
Council Districts	Type of Complaints					Total Cases	%
	CI	DI	IN	PO	PR		
1 JOHNSON	4	1	1	0	2	8	4%
2 POWERS	2	2	1	1	3	9	5%
3 PANDORI	30	14	7	4	9	64	34%
4 FERNANDES	3	0	2	1	2	8	4%
5 DIAZ	14	2	2	1	6	25	13%
6 FISCALINI	9	1	4	2	2	18	10%
7 SHIRAKAWA, JR.	10	1	2	1	3	17	9%
8 WOODY	6	1	0	0	1	8	4%
9 DIQUISTO	6	0	1	0	4	11	6%
10 DANDO	7	0	1	0	3	11	6%
Unknown/Outside City Limit	0	7	1	0	2	10	5%
<b>TOTAL CASES</b>	<b>91</b>	<b>29</b>	<b>22</b>	<b>10</b>	<b>37</b>	<b>189</b>	<b>100%</b>
<b>%</b>	<b>48%</b>	<b>15%</b>	<b>12%</b>	<b>5%</b>	<b>20%</b>	<b>100%</b>	

*Legend: CI = Citizen-Initiated, DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural*

The table above illustrates the different types of complaints received in each of the city council districts. Not included in these figures are the In-Process complaints, which are cases where a statement was received, and are still pending classification.

## SIX MONTH COMPARISON 1995-1997

The following chart presents a comparative six-month study for 1995, 1996 and 1997 complaints. The total number of complaints received from January 1 through June 30, 1997 does not include the In-Process complaints. Note that in 1997, the number of complaints received decreased for all classification types.



## UNNECESSARY FORCE ANALYSIS

Use of Force complaints are divided into two categories: Class I and Class II. Class I Use of Force cases involve those complaints in which the complainant required medical attention for their injuries. Investigations for Class I Use of Force must be completed within 180 days. Class II Use of Force cases include those complaints in which the complainant did not require medical care.

Of the complaints filed, 16 allegations classified as Use of Force were categorized as Class I cases. The remaining 62 Use of Force allegations were given a Class II classification.

Type of Alleged UF		Area Afflicted by Alleged UF		Injury of Alleged UF	
Baton	15	Head	20	Major	10
Canine	1	Torso	12	Moderate	7
Car (officer)	5	Limbs	19	Minor	21
Chemical Agent	7	MBP	7	None	6
Gun (officer)	2	Unknown	7	Unknown	7
Feet	10	<b>Total</b>	<b>65</b>	<b>Total</b>	<b>51</b>
Hands	28				
Knee	2				
Other	12				
Unknown	2				
<b>Total</b>	<b>89</b>				

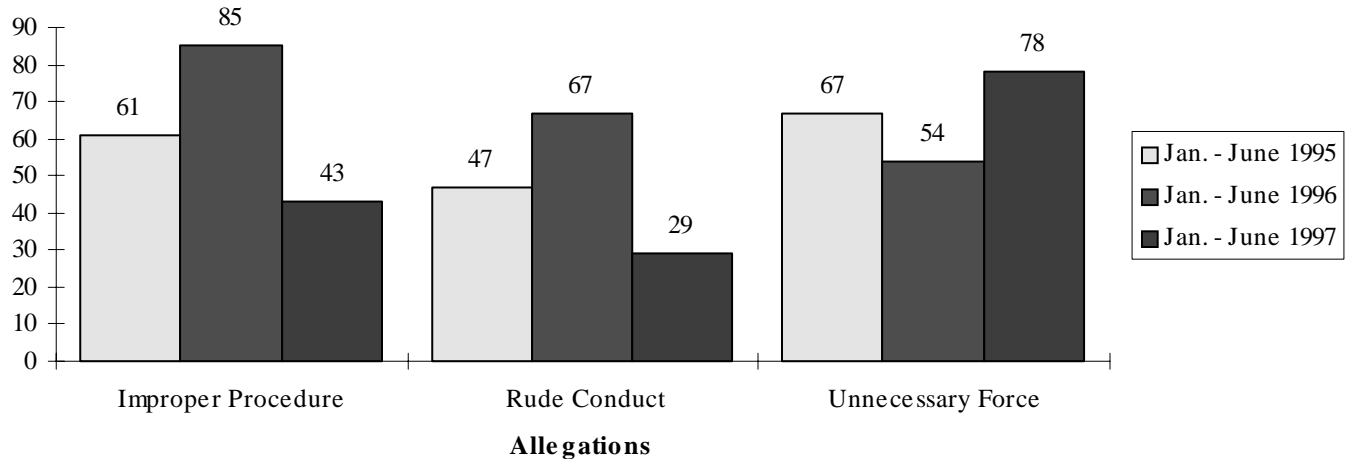
The tables above describe the UF alleged in detail. The total figures, exceed the number of allegations received because there may be multiple types of alleged force associated with each complaint.

## MIDYEAR STATISTICS

### COMPARISON OF ALLEGATIONS RECEIVED

January 1 - June 30, 1995 through 1997

The 120 Formal complaints produced a total of 221 allegations. Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consistently yield the highest number of allegations. In 1997, there was an increase of 14% in the number of Unnecessary Force allegations in comparison to 1995, and a 31% increase in comparison to 1996. Rude Conduct and Improper Procedure allegations decreased in comparison to 1995 and 1996.



### ABOUT THE IPA



Individuals, apparently unaware of the IPA's function, have expressed concerns that the PA was not able to assist them with their specific issue. The IPA accepts civilian complaints against San José police officers and audits the investigations of those complaints conducted by the Professional Standards and Conduct Unit (formerly known as Internal Affairs). The IPA has specific guidelines upon which to operate. This office does not have the jurisdiction to address issues that involve:

- The retrieval of property confiscated by the police.
- Helping complainants collect for injuries or damages caused by the police.
- Complaints regarding other police agencies or private citizens.
- Providing legal advice to complainants about pending charges.
- Hiring or recommending attorneys for complainants.
- Acting an information distribution source regarding police policies and procedures.



### Attention Community Organizations!

One of the goals of the IPA is to promote community awareness in regards to the civilian complaint process.

If you are interested in having the IPA make a presentation at any of your community events, please call the IPA for further details.

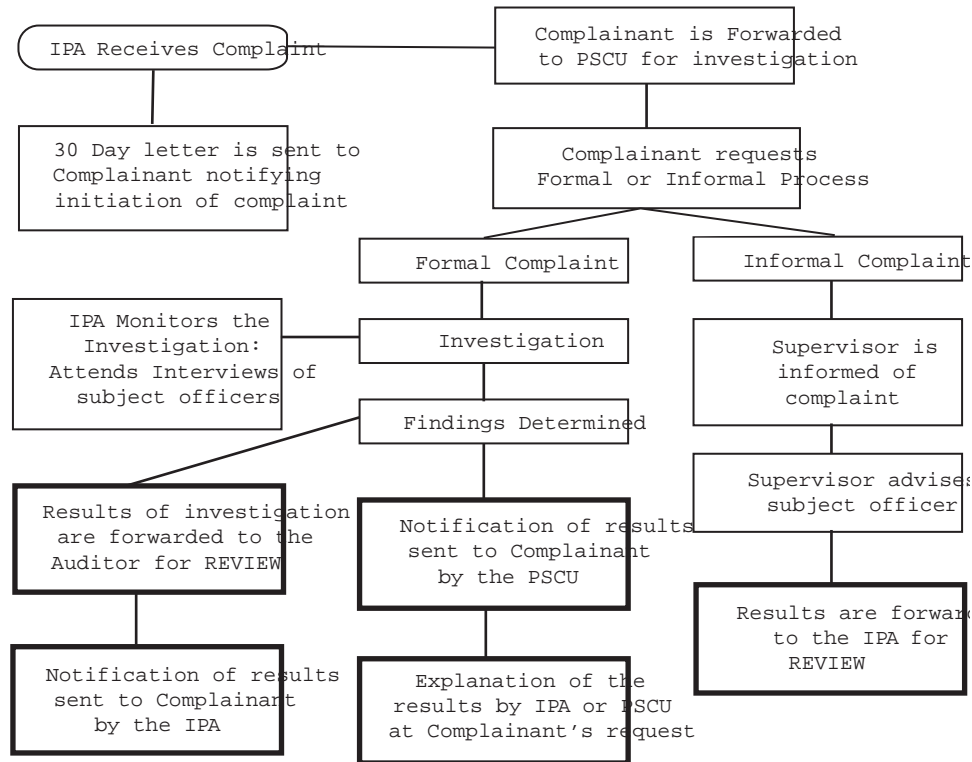
**We look forward to working with you!**

**For more information call:  
(408) 977-0652**

**Email: [Ind\\_Pol\\_Aud@ci.sj.ca.us](mailto:Ind_Pol_Aud@ci.sj.ca.us)**

## What happens to a complaint filed at the IPA?

The following flow chart describes the process that is involved once a complaint against a member of the San José Police Department is filed at the Office of the Independent Police Auditor.



*To file a complaint against a SJPD officer, contact:*

### THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

4 N. Second St., Ste. 650  
San Jose, CA 95113  
Tel (408) 977-0652  
Fax (408) 977-1053

*OR*

### THE PROFESSIONAL STANDARDS & CONDUCT UNIT

777 N. First St., Ste. 666  
San Jose, CA 95112  
Tel (408) 277-4094  
Fax (408) 277-3920

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**We welcome your comments about this newsletter!!**



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**PLEASE REPRINT AND CIRCULATE THIS NEWSLETTER**